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10 **UNITED STATES DISTRICT COURT**

11 **FOR THE STATE OF NEVADA**

12 KEVIN MCDERMOTT,

13 Plaintiff,

14 vs.

15 OTIS ELEVATOR COMPANY, a foreign
corporation; THE PEELLE COMPANY d/b/a
PEELLE DOOR, a foreign corporation,
SCHINDLER ELEVATOR CORPORATION, a
foreign corporation; DOES I through X; and ROE
CORPORATIONS I through X; inclusive,

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17 Defendants.
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19 **Case No. 2:22-cv-01654-GMN-NJK**

20 **JOINT STIPULATION AND ORDER
TO EXTEND DISCOVERY
DEADLINES**

21 **(First Request)**

22 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff KEVIN
MCDERMOTT (“Plaintiff”), Defendant SCHINDLER ELEVATOR CORPORATION
 (“Schindler”), and Defendant OTIS ELEVATOR COMPANY (“Otis”), through their respective
counsel, that the case management discovery deadlines in the Court’s Order dated December 28,
2022 [ECF No. 31] be extended by ninety (90) days, pursuant to FRCP 29 and LR 26-3 as follows.
This requested extension was necessitated by Plaintiff’s recently-approved for extension for time
to serve Defendant The Peelle Company, d/b/a Peelle Door (“Peelle”), the foreign party which

1 manufactured the elevator door security gate at issue and a necessary party to this litigation. This
2 is the first request for an extension of the discovery deadlines.

3 **I. DISCOVERY COMPLETED TO DATE**

4 1. On December 5, 2022, Plaintiff served his FRCP 26 Initial Disclosures;
5 2. On December 11, 2022 Defendant Otis served its FRCP 26 Initial Disclosures;
6 3. On December 20, 2022, Defendant Schindler served its FRCP 26 Initial Disclosures;
7 4. On January 11, 2023, Defendant Schindler served a subpoena duces tecum on
8 Caesars Palace;

9 5. On February 16, 2023, Plaintiff served his First Set of Interrogatories and First Set
10 of Requests for Production of Documents on Defendant Schindler;

11 6. On February 22, 2023, Defendant Schindler served its First Set of Interrogatories
12 and First set of Requests for Production of Documents on Plaintiff;

13 7. On February 23, 2023, Defendant Schindler served a subpoena duces tecum on
14 Nevada OSHA;

15 8. On February 27, 2023 Plaintiff served his First Supplement to FRCP 26 Initial
16 Disclosures, Responses to Defendant Schindler's First Set of Interrogatories, and Responses to
17 Defendant Schindler's First Set of Requests for Production of Documents;

18 9. On March 2, 2023, Defendant Schindler served its First Supplement to FRCP 26
19 Initial Disclosures;

20 10. On March 20, 2023, Defendant Schindler served a subpoena duces tecum on
21 CCMSI;

22 11. On March 24, 2023, Defendant Schindler served its Responses to Plaintiff's First
23 Set of Interrogatories and First Set of Requests for Production of Documents;

24 12. The Parties have subpoenaed various medical providers and other entities with
25 records pertaining to Plaintiff and the subject incident.

26 13. On April 6, 2023, this Court granted Plaintiff a 90-day extension of time, up until
27 July 18, 2023, to serve the Canadian company Peelle which manufactured the elevator safety gate
28 at issue. [ECF No. 34].

1 **II. DISCOVERY TO BE COMPLETED AND REASONS WHY THE**
2 **DISCOVERY REMAINING CANNOT BE COMPLETED WITHIN THE TIME LIMITS**

3 Plaintiff and Defendants respectfully request a 90-day extension of the current case
4 management deadlines to allow time for Peele to be served/appear in the action and to participate
5 in the following discovery to be completed:

6 1. **Fact witness depositions:** Defendants wish to depose Plaintiff Kevin McDermott,
7 Plaintiff's treating physicians, and Plaintiff's managers at Caesars Palace to whom Mr. McDermott
8 reported the incident. However, Defendants have been waiting to do so until after the Peele has
9 been served so as to not require a second deposition after Peele is served and enters the case,
10 effectively duplicating efforts. Moreover, if the parties conduct these essential depositions now
11 before Peele is served, non-party witnesses from Caesars and Plaintiff's treater physicians could
12 be forced to attend depositions twice.

13 2. **Discovery involving Peele:** Peele is a vital defendant in this case: Plaintiff's
14 allegations are that the "safety gate" struck him while he was entering the subject elevator. The
15 other defendants, Schindler and Otis, only maintained the elevator and installed the elevator,
16 respectively, and the safety gate is a vital part of this product liability case. The parties need to
17 conduct discovery involving Peele, which includes written discovery, document requests involving
18 the safety gate at issue, and a FRCP 30(b)(6) deposition of the party. More importantly, this needs
19 to be done prior to the expert disclosure deadline so the parties may disclose expert witnesses.

20 3. **Inspection of the subject elevator:** The parties require an inspection of the subject
21 elevator and security gate at Caesars Palace, prior to the disclosure of expert witnesses and reports.
22 However, this inspection should be conducted after Peele is added as a party in order to allow
23 Peele to meaningfully participate in the inspection and to avoid requiring a second inspection.
24 Moreover, this inspection will require the coordination of at least 4 attorneys and their experts,
25 which the parties likely will not be able to before Plaintiff's initial expert disclosure deadline, which
26 is currently set for May 18, 2023.

27 4. **Expert witness depositions:** Expert witness depositions are expected to be
28 completed after the disclosure of expert witnesses pursuant to this Court's order. However, each

1 party is expected to retain multiple expert witnesses and it will therefore take additional time to
2 coordinate, prepare for, and take the depositions. Furthermore, the expert depositions should be
3 conducted after Peelle is added as a party in order to allow Peelle to attend the depositions to avoid
4 requiring a second deposition of multiple expert witnesses.

5 **5. Other discovery:** Moreover, the extension will allow the parties to do any necessary
6 follow-up discovery after responses to existing written discovery are served, to depose later-
7 identified witnesses and experts, and to obtain any additional records.

8 **III. GOOD CAUSE EXISTS FOR A DISCOVERY EXTENSION**

9 The parties have been diligently conducting discovery in this matter, as evidenced by the
10 written discovery exchanged between the parties. However, Peelle is a necessary party in this case
11 because it manufactured the security gate at issue in this case. Plaintiff has just obtained a 90-day
12 extension to serve Peelle, a Canadian company, until July 18, 2023 and therefore a 90-day extension
13 on all discovery deadlines is practical here to ensure that Peelle has adequate time to be added as a
14 party and subsequently to participate meaningfully in the forthcoming discovery efforts proposed
15 by the parties. Specifically, to avoid having to conduct a second deposition of Plaintiff, and
16 nonparty physicians and Caesars employees, the parties request an extension to be able to conduct
17 this necessary discovery after Peelle enters the case. More importantly, the safety gate is a vital
18 part of this product liability case. The parties need to conduct discovery involving Peelle, which
19 includes written discovery, document requests involving the safety gate at issue, and a FRCP
20 30(b)(6) deposition of the party. This discovery needs to occur before the expert disclosure
21 deadlines (currently May 18, 2023 and June 20, 2023) in order for the parties to serve fulsome and
22 relevant expert disclosures involving the safety gate at issue. Therefore, due to the nature of
23 Plaintiff's extension to serve Peelle, as well as the number of parties and potential experts in this
24 case, an additional 90 days for discovery is necessary to allow enough time to complete the
25 discovery outlined above and to properly develop the claims and defenses of each respective party.

26 Plaintiff and Defendants agree with the proposed extension of the current discovery
27 deadlines by 90 days. Accordingly, no party is prejudiced by the additional time necessary to
28 conduct the remaining discovery and to prepare for expert discovery. Counsel for the parties have

1 been diligently working together to prepare this stipulation and obtain an extension of the current
 2 discovery deadlines.

3 All of the foregoing circumstances constitute good cause to extend the remaining discovery
 4 deadlines, and the parties jointly and in good faith request this Court enter an Order extending the
 5 discovery deadlines in accordance with their stipulation.

6 **IV. PROPOSED REVISED DISCOVERY PLAN**

7 The parties hereby stipulate to continue the discovery deadlines and dispositive motion
 8 deadline 90 days and propose the following amendments to the current discovery deadlines:

| | Old Deadline | New Deadline |
|---|---------------------|---------------------------|
| 10 Final date to amend pleadings or add parties: | May 8, 2023 | August 7, 2023 |
| 11 Plaintiff's initial expert disclosures: | May 18, 2023 | August 16, 2023 |
| 12 Defendant's initial expert disclosures: | June 20, 2023 | September 18, 2023 |
| 13 Rebuttal expert disclosures: | July 19, 2023 | October 17, 2023 |
| 14 Discovery cut off: | August 16, 2023 | November 14, 2023 |
| 15 Dispositive Motions: | September 15, 2023 | December 14, 2023 |
| 16 No trial date has been set. | | |

18 **SUBMITTED BY THE FOLLOWING COUNSEL OF RECORD:**

19 Dated: April 18, 2023.

21 **EVANS FEARS & SCHUTTERT LLP**

23 /s/ Jay J. Schuttert

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Attorneys for Plaintiff Kevin McDermott

ORDER

IT IS SO ORDERED. Based upon the foregoing stipulation, the 90-day extensions to discovery deadlines are granted as follows:

| | Old Deadline | New Deadline |
|--|---------------------|---------------------------|
| 5 Final date to amend pleadings or add parties: | May 8, 2023 | August 7, 2023 |
| 6 Plaintiff's initial expert disclosures: | May 18, 2023 | August 16, 2023 |
| 7 Defendant's initial expert disclosures: | June 20, 2023 | September 18, 2023 |
| 8 Rebuttal expert disclosures: | July 19, 2023 | October 17, 2023 |
| 9 Discovery cut off: | August 16, 2023 | November 14, 2023 |
| 10 Dispositive Motions: | September 15, 2023 | December 14, 2023 |
| 11 | | |
| 12 No trial date has been set. | | |

Mark Wexler
UNITED STATES MAGISTRATE JUDGE

DATED: April 20, 2023